

April 10, 2003

FACT SHEET

Issuance of National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) Operated by Federal Facilities in Colorado

SUMMARY: The Regional Administrator, EPA, Region 8 has issued an NPDES general permit for storm water discharges from small municipal separate storm sewer systems (MS4s) operated by federal facilities in Colorado. The effective date of the permit is June 23, 2003, and will expire on June 22, 2008. NPDES permit coverage for these discharges is required in accordance with the 1987 Amendments to the Clean Water Act (CWA), and final EPA regulations for Phase II storm water discharges (64 FR 68722, December 8, 1999). To obtain discharge authorization under the permit, dischargers must submit a notice of intent (NOI) requesting discharge authorization. The NOI must include a summary describing best management practices and measurable goals which the discharger will implement to control pollutants in the storm water discharges in accordance with the requirements of the CWA. Annual reporting is also required to provide information on the status of the development and implementation of the storm water management program.

Prior to issuing the final permit EPA requested comments on the draft permit. EPA did not receive any comments during the 30-day public comment period. Therefore, EPA Region 8 has issued the final permit without any major changes. The only changes that have been made to the permit are to correct minor typographical errors and inconsistencies.

FOR FURTHER INFORMATION CONTACT: For further information on the final general permit for storm water discharges from small MS4s operated by federal facilities contact Greg Davis by phone at 303-312-6082 or email at davis.gregory@epa.gov, or by mail at EPA, Region 8 (8EPR-EP), 999 18th Street, Suite 300, Denver, CO 80202-2466. Additional storm water information is available from EPA Region 8's website at: <http://www.epa.gov/region08/water/stormwater/> or from EPA's main storm water website at: <http://www.epa.gov/npdes/stormwater/>.

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I. Background

The following is an overview of the basic requirements of Phase II of the NPDES storm water permit program and the requirements of the general permit. Additional information may be obtained at EPA's NPDES website at: <http://cfpub.epa.gov/npdes/stormwater/swphase2.cfm>

A. Statutory and Regulatory Background

The 1987 Water Quality Act (WQA) amended the Clean Water Act (CWA) by adding section 402(p) which requires that NPDES permits be issued for various categories of storm water discharges. Section 402(p)(2) requires permits for the following five categories of storm water discharges:

1. Discharges permitted prior to February 4, 1987;
2. Discharges associated with industrial activity;
3. Discharges from large municipal separate storm sewer systems (MS4s) (systems serving a population of 250,000 or more);
4. Discharges from medium MS4s (systems serving a population of 100,000 or more, but less than 250,000); and
5. Discharges judged by the permitting authority to be significant sources of pollutants or which contribute to a violation of a water quality standard.

The five categories listed above are generally referred to as Phase I of the storm water program. In Colorado, Phase I MS4 permits have been issued by the Colorado Department of Public Health and Environment (CDPHE) to the cities of Denver, Lakewood, Aurora, Colorado Springs, and the highway system operated by the Colorado Department of Transportation within those cities.

In Colorado, NPDES permitting authority for federal facilities has not been delegated to CDPHE. Therefore, EPA maintains NPDES primacy for those facilities. EPA has issued two general permits for storm water discharges at federal facilities in Colorado. One general permit covers storm water discharges from construction sites disturbing five or more acres (63 FR 7858, February 17, 1998) and the second general permit covers (i.e., multi-sector general permit (MSGP)) storm water discharges associated with industrial activity (65 FR 64746, October 30, 2000). Region 8 has also issued construction and industrial general permits which cover facilities located on Indian country in Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

The CWA Sections 402(p)(5) and 402(p)(6) require EPA to conduct two studies and issue regulations which identify additional sources of storm water discharges for permitting. See *Storm Water Discharges Potentially Addressed by Phase II of the National Pollutant Discharge Elimination System Storm Water Program*,: Report to Congress (EPA, 1995, EPA 833-K-94-002) and *Report to Congress on the Phase II Storm Water Regulations* (EPA, 1999, EPA 833-R-99-001). These studies address the nature of the pollutants in the Phase II storm water

discharges and the available control mechanisms for the pollutants. Based on these studies and other available information, final Phase II storm water regulations were promulgated by EPA on December 8, 1999 (64 FR 68722). These regulations set forth the additional categories of discharges to be permitted and the requirements of the program. The additional storm water discharges to be permitted are:

1. Small MS4s (see section I.B below);
2. Small construction sites (i.e., sites which disturb one to five acres); and
3. Industrial facilities owned or operated by small municipalities which were temporarily exempted from the Phase I requirements in accordance with the provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991.

This fact sheet discusses Region 8's general permit for storm water discharges from small MS4s operated by federal facilities in Colorado. Small construction sites will be addressed in a separate EPA permitting action. Industrial facilities exempted by ISTEA may be covered by EPA's MSGP. The permit application deadline for all of these Phase II activities is March 10, 2003.

The 1987 CWA amendments clarified the fact that industrial storm water discharges are subject to the best available technology (BAT) / best conventional technology (BCT) requirements of the CWA, and applicable water quality standards. For MS4s, the CWA specifies a new technology-related level of control for pollutants in the discharges - control to the maximum extent practicable (MEP). However, the CWA is silent on the issue of compliance with water quality standards for MS4 discharges. In September 1999, the Ninth Circuit Court addressed this issue and ruled that water quality standards compliance by MS4s is discretionary on the part of the permitting authority (*Defenders of Wildlife v. Browner*, No. 98-71080). Section III.D of this fact sheet describes the permit requirements which address this issue.

B. Regulated Small MS4s

An MS4 is defined as a "municipal separate storm sewer system." The following four categories of small MS4s are potentially subject to permitting under Phase II of the storm water program (40 CFR §122.32):

1. Small MS4s located in urbanized areas as defined by the Census Bureau based on the 1990 or 2000 census. These MS4s must be permitted unless they receive a waiver based on the criteria discussed below in section I.C. An urbanized area is basically a core city and urban fringe with a population of 50,000 or more;
2. Designated small MS4s located outside of urbanized areas. At a minimum, all municipalities which have a population of 10,000 or more and population density of 1000 per square mile must be considered for designation. Permitting of these MS4s is required based on an evaluation of designation criteria developed by the permitting authority (e.g., rapid growth, high population density, adverse water

- quality impacts);
- 3. Small MS4s which contribute substantial pollutant loads to regulated MS4s through interconnections; and
- 4. Small MS4s designated by petition.

Region 8 is not aware of any federal facility small MS4s in Colorado, located outside of an urbanized area, which have the population and population density by themselves to be designated for permitting as described in section I.B.2 above.

C. Waivers for Small MS4s in Urbanized Areas

The Phase II regulations at 40 CFR §122.32(d) and (e) provide permitting waivers for small MS4s in urbanized areas under the following circumstances:

1. MS4s with a Population Less than 1,000 if:
 - a. The MS4 is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program; and
 - b. If discharges include any pollutant(s) that have been identified as a cause of impairment of any receiving water body, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern.
2. MS4s with a Population of 1,000 to 10,000 if:
 - a. The permitting authority has evaluated all waters of the U.S., including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4;
 - b. For all such waters, the permitting authority has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern. Pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that receives a discharge from the MS4; and
 - c. The permitting authority has determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses or other significant water quality impacts including habitat and biological impacts.

As described above, waivers may generally be granted for MS4s with a population of

1,000 to 10,000 only if comprehensive information is available showing that the MS4 is not a threat to water quality. For the MS4s with a population less than 1,000, however, a waiver may be granted unless specific information is available showing that the discharges are a threat to water quality. Section II.C of this fact sheet provides additional specific information on waivers.

D. Small MS4s Operated by the Federal Government or Other Public Entity

Small MS4s include those systems owned or operated by the United States, a State, city, town or other public body. The small MS4 definition further explains (see 40 CFR §122.26(b)(16)(iii)) that this includes storm sewers systems similar to those operated by municipalities, such as systems at military bases, large hospitals or prison complexes. However, the definition does not include storm sewers in very discrete areas such as an individual office building.

Most small MS4s of this nature would be subject to permitting by virtue of being located within urbanized areas. EPA has created urbanized area maps based on information from the Census Bureau which may be used by potentially affected facilities to determine if they are located within an urbanized area. These maps are available from EPA's web site at: <http://cfpub.epa.gov/npdes/stormwater/urbanmaps.cfm>.

Potentially affected facilities within urbanized areas are also eligible for the permitting waiver discussed above in section I.C based on population. The Phase II regulations do not provide guidance on how to determine population for these "non-municipal" MS4s. Region 8 believes that a reasonable method is to combine the total resident population and the number of full-time workers. Federal facility operators should use this method to determine their population, and the applicability of the Phase II regulations to their specific facilities. All federal facilities with a separate storm sewer system located within an urbanized area of Colorado and a population (i.e., including residents and workers) of 1000 or more, must apply for permit coverage as a small MS4.

Region 8 evaluated all federal properties within urbanized areas in Colorado. These federal properties were evaluated to determine whether they meet the definition of a small MS4 based on two criteria: 1) a storm sewer "system" exists at the facility; and 2) 1000 or more people live or work at the facility on an average daily basis. The first criteria is based on EPA's definition of a small MS4 which specifically excludes individual buildings because they lack a "system" to carry the runoff. The second criteria is based on EPA's waiver provision described in Section I.C.1 above. Using these two criteria, EPA determined that most federal offices within the urbanized areas of Colorado are not required to apply for permit coverage at this time. However, EPA is aware of seven federal facilities within urbanized areas of Colorado that meet both of these criteria and will be required to apply for permit coverage as a small MS4. These seven facilities are listed in Section II.B below.

E. Environmental Impacts of Discharges from Small MS4s

The 1987 decision by Congress to require NPDES permitting for the storm water discharges discussed above was based on a growing awareness of the environmental significance of nonpoint sources of pollutants. For example, EPA's report entitled "National Water Quality Inventory, 1998 Report to Congress" (EPA, 2000) shows that nonpoint sources, including storm water runoff, are the leading causes of existing water quality impairments.

The Nationwide Urban Runoff Program (NURP) which was sponsored by EPA in the years 1978 through 1983 also showed that storm water runoff is a significant source of pollutants (EPA, 1983). The study identified 77 priority toxic pollutants in storm water runoff discharged from residential, commercial, and light industrial areas. Of these toxic pollutants, heavy metals such as copper, lead, and zinc were detected most frequently and at levels of greatest concern.

F. Permitting Options for Small MS4s

The Phase II regulations provide three options for storm water permitting for small MS4s:

1. Apply for coverage under the general permit discussed in this fact sheet;
2. Apply for an individual permit; or
3. Seek coverage as a co-permittee under an existing Phase I MS4 permit via a permit modification (such as one of the Phase I permits mentioned in section I.A above).

Region 8 believes that all Colorado federal facility small MS4s will seek coverage under the proposed general permit. Option 2 is available to Colorado federal facility small MS4s which may believe that the terms and conditions of the general permit are not appropriate for them. Option 3 is not available to Colorado federal facility small MS4s at this time because of the mixed permitting authority in Colorado. All Phase I MS4s in Colorado are permitted by the Colorado Department of Public Health and Environment.

II. Coverage of Small MS4 General Permit

A. Geographic Coverage

The geographic coverage of the small MS4 general permit includes federal facilities located within Colorado. The generic permit number assigned to this area is COR042000. The last three zeros will be filled in with separate numbers for each federal facility that receives permit coverage. For example, the first federal facility covered by the permit will be assigned the permit number COR042001.

The geographic area described above is the non-delegated area within EPA Region 8 where the NPDES permit program has not been delegated to the State of Colorado and where regulated small MS4s are known to require permit coverage. As discussed in section II.C below, Region 8 is only requiring permits at this time for certain small MS4s in the State of Colorado.

EPA also retains NPDES primacy for Indian country in Colorado, but there aren't any regulated small MS4s within this area.

B. MS4s Covered by the 1990 Census and the 2000 Census

As noted earlier, small MS4s are subject to permitting based on the results of the 1990 or the 2000 census. Region 8 has reviewed the results of the urbanized area maps which were based on data from the 2000 census to determine federal facility small MS4s which are subject to permitting. The list below provides the names of the federal facility small MS4s in Colorado which are required to apply for a permit as a result an evaluation of the criteria described in section I.D above. Additional federal facilities may be required to apply for permit coverage as a small MS4 as a result of: 1) growth which causes changes to the urbanized area boundaries; 2) new data and information about a facility; or 3) a petition submitted to EPA (see 40 CFR §122.26(f)).

Federal Facility Small MS4s Within Urbanized Areas in Colorado:

Fort Carson, Colorado Springs (Colorado Springs UA)
General Services Administration's Denver Federal Center, Lakewood (Denver UA)
Peterson Air Force Base, Colorado Springs (Colorado Springs UA)
U.S. Air Force Academy, Colorado Springs (Colorado Springs UA)
U.S. Bureau of Prisons Federal Correctional Institution, Englewood (Denver UA)
U.S. Department of Commerce, National Institute of Standards and Technology,
Boulder (Boulder UA)
Veterans Affairs Medical Center, Denver (Denver UA)

C. Small MS4 Waivers in Region 8

As shown in the list above, there are 7 small MS4s which are located within urbanized areas in the geographic area of coverage of the permit. The population (within an urbanized area) of all these small MS4s is above 1,000. In order for the 7 MS4s to qualify for a waiver, comprehensive information must be available showing that the discharges from the MS4s are not a threat to water quality. Region 8 does not have such information for any of these MS4s; hence, no waivers are being granted for any of these MS4s and the MS4s must seek permit coverage for their discharges.

D. NPDES Program Delegation to State of Colorado

Sometime in the future, the Colorado Department of Public Health and Environment (CDPHE) may request an NPDES permit program delegation for federal facilities in the state. The delegation would likely cover all federal facility discharges within the State of Colorado except for discharges on Indian country. If this occurs, the final delegation agreement will explain how permits issued by EPA will be transferred to CDPHE.

III. Limitations on Coverage

A. Endangered Species

The Endangered Species Act (ESA) of 1973 requires federal agencies such as EPA to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (also known collectively as the “Services”), that any actions authorized, funded, or carried out by the Agency (e.g., EPA issued NPDES permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any federally-listed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 16 U.S.C. 1536(a)(2), 50 CFR §402 and 40 CFR §122.49(c)).

To ensure compliance with the ESA, Part 1.5 of the permit restricts permit eligibility to ensure the activities of the small MS4 operator pose no adverse effect to endangered and threatened species and critical habitat. Applicants must meet one or more of the following five ESA criteria which are set forth in the permit:

CRITERIA A: No endangered or threatened species or critical habitat are in proximity to the MS4 or the point(s) where authorized discharges reach waters of the United States; or

CRITERIA B: In the course of a separate federal action involving the MS4 (e.g., EPA processing request for an NPDES permit, issuance of a CWA section 404 wetlands dredge and fill permit, etc.), formal or informal consultation with the Fish and Wildlife Service under section 7 of the Endangered Species Act (ESA) has been concluded and that consultation:

1. addressed the effects of the storm water discharges, and discharge-related activities on listed species and critical habitat, and
2. the consultation resulted in either a no jeopardy opinion or a written concurrence by the Services on a finding that the storm water discharges, and discharge-related activities are not likely to adversely affect listed species or critical habitat; or

CRITERIA C: The activities of the MS4 are authorized under section 10 of the ESA and that authorization addresses the effects of the storm water discharges and discharge-related activities on listed species and critical habitat; or

CRITERIA D: The applicant has evaluated, using best judgement and knowledge, the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat. Based on the evaluation, the permittee has determined that there is no reason to believe the discharge and discharge-related activities will jeopardize the continued existence of any species or result in the adverse modification or destruction of critical habitat; or

CRITERIA E: The storm water discharges, and discharge-related activities were already addressed in another operator's certification of eligibility under Part 1.5.3.1 through Part 1.5.3.4 which included the MS4's activities. By certifying eligibility under this Part, the applicant agrees to comply with any measures or controls upon which the other operator's certification was based;

The above criteria are very similar to the criteria in EPA's MSGP which Region 8 believes are also appropriate for the small MS4 general permit. Addendum A to the permit (also derived from the MSGP) provides additional direction which must be followed by permit applicants concerning the determination of permit eligibility. Permittees must certify that they have met the eligibility requirement when they submit their notices of intent requesting coverage under the permit. Authorization to discharge commences 30 days after the NOI is postmarked unless EPA determines that the applicant did not meet the eligibility requirements.

Region 8 has added a qualification to the permit and Addendum A regarding an applicant's ability to choose which eligibility criteria to use. In the ordinary case, the applicant's analysis, if done in accordance with Addendum A, will be sufficient to conclude that the activities to be authorized will not likely result in adverse effects on listed species or critical habitat. In some instances, however, where EPA or the Services have particular concerns warranting a more thorough analysis, EPA may direct an applicant to pursue eligibility only under Criteria B (formal or informal consultation with FWS) or to pursue an individual NPDES permit. For example, even in the absence of formally designated critical habitat, it may be necessary for EPA and the Services to examine the effect of habitat alteration or destruction on listed species, whether or not they were detected in the proximity of the MS4.

The term "discharge-related activities" is defined in Part 6 of the permit and includes "activities which cause, contribute to, or result in storm water point source pollutant discharges; and measures to control storm water discharges, including the siting, construction, and operation of best management practices (BMPs) to control, reduce, or prevent storm water pollution." Permittees must also certify that they have met the ESA eligibility requirement when they submit their notices of intent requesting coverage under the permit. The principal threats to listed species from the storm water discharges are loss or modification of habitat and materials such as pesticides and other pollutants in the discharges.

Since species are listed and de-listed periodically, applicants will need the most current list at the time endangered species assessment is conducted. The nearest FWS field office will have the most current list for each county. EPA has developed a county-species list which can be used as a guide, but it is not as accurate as FWS's list (<http://cfpub.epa.gov/npdes/stormwater/endangerspecies.cfm>). With all the conditions discussed above, Region 8 believes that the permit issuance will have no effect on listed species.

B. Historic Preservation

The National Historic Preservation Act (NHPA) requires federal agencies to take into

account the effects of federal undertakings, including undertakings on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term “federal undertaking” is defined in the existing NHPA regulations to include any project, activity, or program under the direct or indirect jurisdiction of a federal agency that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects for that project, activity, or program. See 36 CFR §802(o). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR §802(e).

Federal undertakings include the EPA’s issuance of general NPDES permits. To ensure compliance with the NHPA, the permit authorizes storm water discharges only under the following circumstances:

CRITERIA A: The storm water discharges and discharge-related activities do not affect a property that is listed or is eligible for listing on the National Register of Historic Places as maintained by the Secretary of the Interior; or

CRITERIA B: The MS4 has obtained and is in compliance with a written agreement with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) that outlines all measures that will be undertaken to mitigate or prevent adverse effects to historic properties.

The above requirements are implemented via the eligibility requirements of the permit (Part 1.6) which restricts permit eligibility to storm water discharges and storm water discharge-related activities which meet either of the above criteria. The above criteria are very similar to the criteria in EPA’s MSGP which Region 8 believes are also appropriate for the small MS4 general permit. Addendum B to the permit (also derived from the MSGP) provides additional guidance to permit applicants concerning the determination of permit eligibility. Applicants must also certify that they have met this eligibility requirement when they submit their notices of intent requesting coverage under the permit.

C. Discharges to Water Quality Impaired Waters

Part 1.7 of the permit includes eligibility restrictions for discharges to water quality impaired water bodies. For the purposes of the permit, “water quality-impaired” refers to a stream, lake, reservoir, or other waterbody that is not currently meeting its assigned water quality standards. These waters are also referred to as “303(d) waters” due to the requirement under that section of the CWA for states to periodically list all state waters that are not meeting their water quality standards.

As written in Part 1.7 of the permit, EPA will notify MS4 operators whose discharges are likely to cause or contribute to a water quality impairment, or whose discharges contribute directly or indirectly to a 303(d) listed waterbody. Prior to notifying MS4 operators, EPA will

review existing information on waterbody impairments in the areas surrounding the 7 known small MS4s that will be applying for permit coverage. EPA will use the NOI information submitted by applicant to verify which waters of the United States receive discharges from the MS4. The notification from EPA will specify the actions and dates for meeting the requirements of Part 1.7.

If EPA notifies the permittee that discharges from the MS4 are causing or contributing to a water quality impairment and no TMDL has been established, the storm water management program (SWMP) must include a section describing how the program will control the discharge of the pollutants of concern and ensure discharges from the MS4 will not cause or contribute to instream exceedances of the water quality standards. This documentation must specifically identify measures and BMPs that will collectively control the discharge of the pollutants of concern. The MS4 operator may be required to provide additional information to EPA to determine whether their discharge is causing or contributing to an impairment.

If a TMDL has been established with an allocation for the MS4's storm water discharges, the SWMP must identify appropriate BMPs which will ensure that compliance with the allocation for the storm water discharge will be achieved. EPA's notification will require the MS4 operator to assess and document whether the WLA is being met through implementation of existing storm water control measures or if additional control measures are necessary. The notification may also include requirements to describe and document an implementation schedule for controls and calculations, monitoring, or other proof that show that the WLA is being met. This may involve an iterative process of controls and evaluation. All documentation related to these requirements must be included as part of the records for the SWMP.

D. Compliance with Water Quality Standards and Anti-Degradation Policies

Part 1.4.7 of the permit restricts discharges to those which would not cause or contribute to a violation of applicable water quality standards. As noted in section I.A of this fact sheet, Region 8 has discretion under the CWA regarding compliance with water quality standards for MS4s. Region 8 believes that the requirements are consistent with the intent of the Phase II program as described in the preamble to the Phase II regulations (64 FR 68753). Part 1.4.9 of the permit also requires the discharges be consistent with State anti-degradation policies.

E. Storm Water Discharges Mixed with Non-Storm Water

The permit requires the permittee to prohibit all types of non-storm water discharges into its MS4, except for discharges that are authorized by a separate NPDES permit, and allowable non-storm water discharges listed in Part 1.3.2 of the permit.

The permit also does not allow coverage for discharges of storm water associated with industrial activity (40 CFR §122.26(b)(14)(i) through (ix) and (xi)), or storm water discharges

from construction activity (40 CFR §122.26(b)(14)(x) or 40 CFR §122.26(b)(15)).

IV. Summary of Permit Conditions

A. Application Requirements for Permit Coverage

A notice of intent (NOI) must be submitted by all dischargers seeking discharge authorization under the general permit (see 40 CFR §122.28(b)(2)(i)).

1. Deadlines for NOIs

- a. For existing small MS4s in urbanized areas, the deadline for submitting the NOI is March 10, 2003 (see 40 CFR §122.32(a)(1)).
- b. For existing MS4s outside urbanized areas which are designated for permitting under 40 CFR §122.32(a)(2), the deadline for submitting the NOI is not later than 180 days after notification (unless the permitting authority provides additional time in the designation notice).
- c. For new MS4s within urbanized areas which commence discharges subsequent to March 10, 2003, the NOI must be submitted not later than 30 days prior to commencing discharges.

2. Contents of NOI

EPA has not developed an NOI form for small MS4s. The required NOI information must be provided in letter format to EPA. Region 8 estimates that the length of most NOIs will be ten to thirty pages and will include enough detail on the BMPs and measurable goals for each of the six minimum measure to serve as the foundation for the SWMP that will be developed and implemented during the five year permit term. The following information must be provided:

- a. The legal name of the federal facility or municipal entity;
- b. The full facility mailing address and telephone number;
- c. The name and phone number of the person or persons responsible for overall coordination of the SWMP;
- d. Attach a location map showing the boundaries of the MS4 under the applicant's jurisdiction. The map must include streets or other demarcations so that the exact boundaries can be located;
- e. The area of land that drains to the applicant's MS4 (in square miles);
- f. The latitude and longitude of the approximate center of the MS4;
- g. The names of the waters of the United States that receive discharges from the system;
- h. If the applicant is relying on another entity to satisfy one or more permit obligations (see Part 3.3 of the permit), the identity of that entity(ies) and the element(s) the entity(ies) will be implementing;

- i. Attach information on each of the storm water minimum control measures in Part 3.2 of the permit. For each minimum control measure include the following:
 - a. Description of the best management practices (BMPs) that will be implemented;
 - b. Measurable goals for each BMP; and
 - c. Timeframes (i.e., month and year) for implementing each BMP.
 - j. A description of how the eligibility criteria for listed species and critical habitat have been met (see Part 1.5 of the permit);
 - k. A description of how the eligibility criteria for historic properties have been met (see Part 1.6 of the permit);
 - l. Signature and certification by an appropriate official. The NOI must include the certification statement (see Part 5.7 of the permit).
3. Where to Submit the NOI

NOIs must be submitted to EPA, Region 8 at the following address:

Greg Davis (8EPR-EP)
Small MS4 Notice of Intent
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

4. Reapplication for Coverage When the General Permit Expires

The general permit will expire five years from its effective date. Permittees who are granted coverage under the permit may request a continuation of coverage under a reissued general permit by submitting an NOI in accordance with the requirements of the reissued general permit.

If the permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earliest of:

- a. Reissuance or replacement of the permit, at which time a new NOI must be submitted in accordance with the requirements of the reissued permit; or
 - b. Issuance of an individual permit for the discharges; or
 - c. A formal permit decision is made by the Director not to reissue the general permit, at which time, dischargers must seek coverage under an alternative general permit or an individual permit.
5. Co-Permittees Under a Single NOI

Part 2.5 of the permit provides that two or more small MS4s may jointly develop and implement a SWMP. The MS4s may also submit one NOI. However, the one NOI must include all the information described above in section IV.A.2 above, for each permittee. Also, if responsibilities are being shared as described below in section IV.D, the SWMP must describe which permittees are responsible for implementing each of the minimum control measures.

6. Notice of Termination

A discharger covered by the general permit may terminate coverage if any of the following conditions are met:

- a. A new operator has assumed responsibility for the MS4; or
- b. The discharger has ceased operations at the MS4; or
- c. The permittee is able to eliminate the storm water discharges from the MS4.

EPA has not developed a notice of termination (NOT) form for small MS4s. In order to terminate coverage, a letter including the following information must be submitted:

- a. Name, mailing address, and location of the MS4 for which the notification is submitted;
- b. The name, address and telephone number of the operator addressed by the Notice of Termination;
- c. The NPDES permit number for the MS4;
- d. An indication of whether another operator has assumed responsibility for the MS4, the discharger has ceased operations at the MS4, or the storm water discharges have been eliminated; and
- e. The following certification:

I certify under penalty of law that all storm water discharges from the identified MS4 that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the MS4 or that I have ceased operations at the MS4. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water under this general permit and that discharging pollutants in storm water to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an NPDES permit. I also understand that the submission of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

NOTs must be signed in accordance with Part 5.7 of the permit and sent to the same address as the NOI given above.

B. Storm Water Management Program (SWMP) Requirements

The general permit requires that all dischargers covered by the permit develop and implement a SWMP. The SWMP is the means through which dischargers comply with the CWA's requirement to control pollutants in the discharges to the maximum extent practicable (MEP) and comply with the water quality related provisions of the CWA. EPA considers MEP to be an iterative process in which an initial SWMP is proposed and then periodically upgraded as new BMPs are developed or new information becomes available concerning the effectiveness of existing BMPs (64 FR 68754). The Phase II regulations at 40 CFR §122.34 require the following six minimum pollution control measures to be included in SWMPs:

1. Public Education and Outreach on Storm Water Impacts;
2. Public Involvement/Participation;
3. Illicit discharge detection and elimination;
4. Construction Site Storm Water Runoff Control;
5. Post-Construction Storm Water Management in New Development and Redevelopment; and
6. Pollution Prevention/Good Housekeeping for Municipal Operations.

The regulations specify required elements for each minimum measure and also include guidance which provides additional information recommended for an adequate program. The permit includes nearly verbatim the required program elements for each minimum measure. The permit also includes a number of additional requirements for each minimum measure which were derived from the recommendations of the regulations. These provisions are included in the permit as requirements rather than recommendations to ensure their enforceability.

EPA has also developed a menu of BMPs for small MS4s which is available on EPA's website at <http://www.epa.gov/npdes/menuofbmps/menu.htm> to assist in the development of SWMPs. The menu provides detailed descriptions of BMPs which may be included in SWMPs to satisfy the requirements of the six minimum measures.

It should also be noted the SWMP must include supporting documentation concerning the ESA-related requirements.

C. Measurable Goals

Measurable goals are quantifiable measures of progress in implementing the various BMPs which comprise a SWMP. Measurable goals may consist of specific one-time only objectives such as the development of a storm water ordinance by a certain date or they may consist of numeric objectives for the frequency of implementation of a given BMP (such as the frequency of street sweeping or catch basin cleaning). Measurable goals may also consist of specific objectives for water quality improvement over a given time period.

The Phase II regulations at 40 CFR §122.34(d)(1) and the general permit require that measurable goals be submitted by small MS4s with their NOIs. Measurable goals must be included for each specific BMP which is proposed to be included in the SWMP. Measurable

goals were included in the Phase II regulations to ensure that EPA and the public can better evaluate the level of effort proposed by MS4s in controlling pollutants in the discharges and to ensure accountability of the MS4s. The measurable goals and BMPs submitted with the NOI form the foundation of the SWMP which will be developed and implemented during the five year permit term.

EPA has developed a measurable goals guidance which is available on EPA's website at <http://www.epa.gov/npdes/stormwater/measurablegoals/index.htm>. Example measurable goals are provided for each of the six minimum measures to assist MS4s in the development of their own measurable goals. Region 8 recommends that this guidance be reviewed by MS4s in developing their measurable goals.

D. Sharing Responsibility for BMP Implementation

The Phase II regulations at 40 CFR §122.35(a) recognize that one or more of the minimum measures may be implemented within a given MS4 by an entity other than the discharger (for example, a county may implement a street sweeping program in a given city within the county). Part 3.3 of the permit allows an MS4 operator to rely on another entity to implement some of the required minimum measures if:

1. The other entity, in fact, implements the control measure;
 2. The particular control measure, or component of that measure, is at least as stringent as the corresponding permit requirement; and
 3. The other entity agrees to implement the control measure on the permittee's behalf.
- Written acceptance of this obligation is expected. This written acceptance must be maintained with the SWMP.

Also, the MS4 operator must specify in the annual report (see Part 4.3 of the permit) that it relies on another entity to satisfy some of its permit obligations. If an MS4 operator relies on another entity for implementation of a particular BMP, the MS4 operator remains responsible for compliance with the permit if the other entity fails to implement the BMP.

E. Review of SWMPs by Region 8

Part 3.4.3 of the permit specifies that Region 8 may request documentation of the minimum control measures as required by the SWMP. EPA may review and subsequently notify the MS4 operator that the SWMP or the measurable goals do not meet one or more of the minimum requirements of the permit. This provision ensures that Region 8 may require upgrades or modifications to SWMP which may be deficient and ensure that the SWMP is adequate to meet the objectives of the general permit. Changes to SWMP, when required, must be made according to the schedule provided in the notification.

F. Monitoring, Recordkeeping, and Reporting Requirements

1. Monitoring Requirements

The Phase II storm water regulations at 40 CFR §122.34(g) require that small MS4s evaluate program compliance, the appropriateness of the BMPs in their SWMPs and progress towards meeting their measurable goals. These requirements have been included in Part 4 of the general permit.

The nature of the monitoring activities which will be implemented by permittees will largely depend on the measurable goals selected by the permittees. As discussed above in section IV.C of this fact sheet, measurable goals may be measures of the level of effort of an MS4 in implementing a given BMP (such as frequency of street sweeping) or they may be measures of water quality improvement.

Region 8 expects that for the initial five-year term of the general permit, most small MS4s operated by federal facilities will opt for measurable goals which consist of a given level of effort in implementing a particular BMP. As such, the monitoring activities will largely consist of keeping track of these efforts. This information must be submitted to Region 8 in the annual report described below in section IV.H.3. If chemical, biological, or physical storm water monitoring is conducted by the permittee, Part 4.1 of the permit includes requirements related to representative monitoring, test procedures, and recording results.

If a permittee chooses to conduct storm water monitoring, EPA does not encourage traditional end-of-pipe monitoring which is commonly found in most NPDES permits. Instead, EPA encourages a mix of physical, chemical, biological, or programmatic indicators. In 1994, EPA co-sponsored a conference in Crested Butte, CO (ASCE, 1995) to consider storm water monitoring needs and how to obtain the most meaningful results based on limited monitoring dollars. A general conclusion from the conference was that a mix of various types of indicators should be considered when designing storm water monitoring programs.

2. Recordkeeping

Part 4.2 of the general permit requires that records required by the permit be retained by the permittee for at least three years. The permit also requires that the permittee make these records (including the SWMP) available to the public during regular business hours. See 40 CFR §122.34(g)(2).

3. Annual Reports

Part 4.3 of the general permit requires the submittal of an annual report to EPA. The following information is required (see 40 CFR §122.34(g)(3)):

- a. The status of compliance with permit conditions, an assessment of the

appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;

b. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

c. A summary of the storm water activities which are planned during the next reporting cycle (including an implementation schedule);

d. Proposed changes to the SWMP, including changes to any BMPs or any identified measurable goals that apply to the program elements;

e. Notice that the permittee is relying on another governmental entity to satisfy some of the permit obligations (if applicable).

The first report is due June 30, 2004, covering the activities of the permittee during the period beginning on the effective date of the permit for the permittee and ending March 10, 2004. Subsequent annual reports are due on June 30 of each year following 2004 during the remainder of the term of the permit.

V. Cost Estimates For Common Permit Requirements

Cost estimates for implementing the requirements of the general permit for small MS4s were developed by EPA as part of the development of the Phase II regulations. This information can be found at 64 FR 68791 and is not being repeated here.

VI. Permit Appeal Procedures

Within 120 days following notice of EPA's final decision for the general permit under 40 CFR §124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with Section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court or apply for an individual permit as specified at 40 CFR §122.21 (and authorized at 40 CFR §122.28) and then petition the Environmental Appeals Board to review any condition of the individual permit (40 CFR §124.19 as modified on May 15, 2000, 65 FR 30886).

Appendix A References

ASCE. 1995. Harry C. Torno, Editor, Stormwater NPDES Related Monitoring Needs, Proceedings of an Engineering Foundation Conference.

EPA. 1983. Results of the Nationwide Urban Runoff Program, Final Report, Water Planning Division.

EPA. 2000. National Water Quality Inventory: 1998 Report to Congress, EPA 841-R-00-001, June, 2000.